

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 07-331
v.)	
)	
DELAVAN, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and allege as follows:

NATURE OF THE ACTION

2. This is a civil action brought pursuant to Sections 106, 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607 and 9613(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, and the recovery, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), of unreimbursed response costs incurred, and to be incurred, in response to releases and threatened releases of hazardous substances into the environment at and from operable unit 2 ("OU3") at the Railroad Avenue Superfund Site in West Des Moines, Polk County, Iowa. The United States also

seeks a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding the defendant liable for all future response costs that will be binding in any subsequent action or actions to recover further response costs incurred by the United States or the State at or in connection with OU2 at the Railroad Avenue Superfund Site.

3. As a result of metal treatment operations conducted by Delavan, Inc., the property which it owns and on which it operated and the adjoining groundwater are contaminated with hazardous substances. This contaminated property, referred to herein as the "Site," includes, but is not limited to, property located at 2250 Fuller Road in West Des Moines, Iowa and also encompasses the groundwater plume emanating from that property, as well as any other areas where hazardous substances released from that property have come to be located.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

5. At times relevant hereto, defendant Delavan, Inc. has owned and/or operated a facility at the Site, within the meaning of sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2).

6. Defendant Delavan, Inc., is a corporation organized and existing pursuant to the laws of the State of Delaware.

GENERAL ALLEGATIONS

7. The Railroad Avenue Superfund Site is located in West Des Moines, a western suburb of Des Moines. Two plumes of groundwater contamination have been identified at the Railroad Avenue Superfund Site. The Northern Plume is along Railroad Avenue in the southeast portion of West Des Moines. The Southern Plume, known in this Complaint as the Site, is south of Railroad Avenue, emanating from the Delavan, Inc. facility on Fuller Road and moving south toward the Raccoon River.

8. At relevant times, Delavan, Inc. operated a plant that, among other things, heat treated and brazed metal parts. Prior to the heat treatment, Delavan, Inc. cleaned some of the parts with vapor-degreasing chemicals, including tetrachloroethane (PCE) and trichloroethene (TCE).

9. The contamination present at the Site is attributable to the operations of Delavan, Inc..

10. There were and are "releases," as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of continuing releases, of "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Site.

11. The releases and threatened releases of hazardous substances at the Site caused the United States to incur costs of "response" within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

12. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

CLAIM FOR RELIEF

13. The preceding allegations are included in this claim for relief.

14. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that, “[n]otwithstanding any other provision or rule of law, and subject only” to the statutorily defined defenses “the owner or operator of a vessel or a facility . . . shall be liable for . . . all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan”

15. Delavan, Inc. is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and an “owner or operator” of a facility within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

16. The United States has incurred response costs in connection with response actions at the Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The United States continues to incur response costs, including enforcement costs associated with the recovery of funds expended in response to the releases and threatened releases of hazardous substances at the Site.

17. The response actions taken and the response costs incurred by the United States at the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

18. Delavan, Inc. is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the United States in connection with the Site.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

1. Enter judgment against Delavan, inc. jointly and severally, for all response costs incurred by the United States in connection with the Site;
2. Enter a declaratory judgment of liability against Delavan, Inc. that will be binding in any action to recover further response costs incurred by the United States in connection with the Site;
3. Award the United States its costs in this action; and
4. Grant such other and further relief as is appropriate.

Respectfully submitted,

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

SARAH D. HIMMELHOCH
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044-7611
Telephone: (202) 616-6560
Fax: (202) 514-4180
Email: sarah.himmelhoch@usdoj.gov

MATTHEW G. WHITAKER
United States Attorney
Southern District of Iowa
U.S. Courthouse Annex, Suite #286
110 East Court Avenue
Des Moines, Iowa 50309-2053

OF COUNSEL:

DANIEL BREEDLOVE
Assistant Regional Counsel
U.S. Environmental Protection Agency Region VII
901 N. 5th Street
Kansas City, Kansas 66101